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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,062	12/14/2001	Dean Stoneback	MOT-D2555	6228

24375 7590 10/04/2005

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EXAMINER

SALCE, JASON P

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/017,062	Applicant(s) STONEBACK ET AL.	
	Examiner Jason P. Salce	Art Unit 2614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-32.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 3. NOTE: Claim 5 and all subsequent dependent claims require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: The claims still read on the prior art of record used to reject the claims (Williams and Cooper).



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Continuation of Item 11 of Advisory


Applicant argues that Williams does not teach a system for monitoring, isolating and reporting ingress noise traveling upstream in an HFC network which includes a BTP remotely located at or downstream from the node at or downstream from an RF amplifier in the HFC network and also states that Williams simply teaches an open gate switch to prevent all signals (noise and legitimate signals) from passing, hence isolating a portion of the network referred to as a "dirty" portion. The examiner fails to understand how the open gate switch is preventing all signals from passing and therefore isolating a portion of the network. Clearly Williams teaches a system for monitoring ingress noise traveling upstream in an HFC network (see Column 10, Lines 37-45 which describes that the return gate device 140 monitors the busy, clear and jammed status of the return path (upstream path)). Therefore, Williams also discloses detecting the noise from legitimate signals and to isolate the noise from the legitimate signals. Also see Column 10, Lines 43-45 and Column 11, Lines 1-2 for reporting ingress noise to the headend.

Applicant also argues that there is no suggestion in Williams that noise could instruct the prybar to close the gate, as the Office action appears to conclude. The examiner makes no such conclusion. The return gate itself is capable of monitoring ingress noise (see arguments above), which is consistent with the claim limitations. Even if the examiner argued that the noise itself could instruct the prybar to close the gate, the examiner fails to understand how this is relevant to the claim limitations, which

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state "monitoring, isolating, and reporting noise", not whether the noise itself is used to trigger any type of prevention of ingress noise in the system.

Applicant also argues that Cooper merely discloses a cable modem, which is capable of performing power measurements. The examiner agrees, however, the examiner further notes that Cooper also detects noise and reports the detection to a cable headend (see Column 7, Line 66 through Column 8, Line 8). The Applicant further argues that the cable modem of Cooper is clearly located at the subscriber. Again, the examiner agrees, however, as stated in the previous Office Actions' arguments, Williams teaches a return transmitter used to report messages concerning ingress noise to the headend (see Column 11, Lines 8-15), but is silent about the details of the type of device used for the return transmitter. The examiner presented Cooper for the purpose of teaches that a cable modem is capable of reporting ingress noise to a headend, therefore, it would have been obvious to modify the return transmitter to take the form of a cable modem.



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